quently where the directors failed to exercise an honest discretion and good faith, an accounting was decreed, *Pierce* v. *Equitable Life Assur. Soc., supra.* While no other court has actually decreed an accounting, 1 COOLEY BRIEFS 123, it has been intimated in cases where an accounting was refused that in a proper case made the decision might be otherwise. The essential allegations suggested are: "An abuse of discretion in the apportionment," *Hudson* v. *Knickerbocker Life Insurance Co.,* 28 N. J. Eq. 167; "Fraud or other irregularity that would give equity jurisdiction," *Grieb* v. *Equitable Life Assur. Soc., supra; Gadd* v. *Equitable Life Assur. Soc.,* 97 Fed. 834; *Everson* v. *Equitable Life Assur. Soc.* 68 Fed. 258 affirmed, 71 Fed. 570; *Hunton* v. *Equitable Life Assur. Soc.,* 45 Fed. 661. The New York courts have said: "Inasmuch as the agreement is that the apportionment shall be an equitable one, the question of what is an equitable one, all the facts and circumstances being known, may be one over which the courts have supervision," *Uhlman* v. *N. Y. Life Ins. Co.,* 109 N. Y., 421, 17 N. E. 363, 4 Am. St. Rep. 482; *Greeff* v. *Equitable Assur. Soc.,* 160 N Y 19, 46 L. R. A. 288, 73 Am. St. Rep. 659. The decision of the principal case is the logical development from these cases.

JUDGMENT—DEATH OF PARTY—ENTRY OF JUDGMENT NUNC PRO TUNC.—After final hearing and argument of an action for specific performance, and before the filing of the opinion, one of the defendants died. The court directed the decree to be entered *nunc pro tunc* as of the date of the argument. Upon appeal this was urged as error. *Held,* no error. *Schaeffer* v. *Coldren,* (Penn. 1912) 85 Atl. 98.

Where the court has once acquired jurisdiction during the lifetime of a party, a judgment rendered against him after his death is not void, being merely erroneous and liable to be set aside,*City of New Orleans* v. *Gaines,* 138 U. S. 595; *Reid* v. *Holmes,* 127 Mass. 326;*Swasey* v. *Antram,* 24 Oh. St. 87; *Berkey* v. *Judd,* 27 Minn. 475. In some states the doctrine is otherwise, and such a judgment is absolutely null and void, *Life Assn.* v. *Fassett,* 102 Ill. 315; *Bragg* v. *Thompson,* 19 S. C. 572; *Succession of Hoggatt,* 36 La. Ann. 337. However this rule may be, there is another doctrine generally followed, that if a judgment is under advisement, and meanwhile one of the parties dies, the court will not allow the action to abate, but will enter judgment *nunc pro tunc* as of the time when the party was still alive, *New Orleans* v. *Warner,* 176 U. S. 92; *In re Page,* 50 Cal. 40; *Wilkins* v. *Wainright,* 173 Mass. 212; *Long* v. *Stafford,* 103 N. Y. 274; *Gunderman* v. *Gunnison,* 39 Mich. 313; *Dial* v. *Holter,* 6 Oh. St. 228. As is said in a well considered case on a slightly different proposition, the reason for the rule is that "An objection of this kind is so entirely technical in its nature, so contrary to the general principles of justice, that it is entitled to no peculiar favor," *Brown* v. *Wheeler,* 18 Conn. 198, 208. For an excellent note on the question, see 49 L. R. A. 153.

JURY—CHALLENGE FOR CAUSE—EFFECT OF FAILURE TO EXERCISE PEREMPTORY CHALLENGE.—Appellants, on trial for murder, interposed a challenge for cause against one of the jurors, which the trial court overruled and to which

ruling the appellants merely excepted without resorting to a peremptory challenge to remove the juror. At the time the full jury was sworn, the appellants still retained seven unused peremptory challenges. Appellants seek reversal of the judgment of conviction on the ground of erroneous ruling by the trial court relative to the protested juror's competency to serve. *Held*: Until a defendant's peremptory challenges are exhausted he cannot complain of the overruling of his challenges for cause to any particular juror who afterwards serves on the panel, for unless he exercises them when the occasion arises, he is in a sense leading the court into error which he might have cured. *State* v. *Humphrey et al* (Or. 1912) 128 Pac. 824.

The court's ruling is in full accord with the weight of authority. "A party waives his right to insist upon an error in the refusal of the court to sustain a challenge for cause when such party fails to exhaust his peremptory challenges." *State* v. *Stockman,* 9 Kan. App. 422; 59 Pac. 1032; *C. B. & Q. R. R. Co.* v. *Krayenbuhl,* 70 Neb. 766, 98 N. W. 44; *Knollin* v. *Jones,* 7 Idaho 466, 63 Pac. 638; *Iowa* v. *Wright,* 112 Ia. 436, 84 N. W. 541; *Mabry* v. *State,* 50 Ark. 492; *People* v. *Rush,* 113 Mich. 539; *Yecker* v. *San Antonio Traction Co.,* 33 Tex. Civ. App. 239, 76 S. W. 780; *Preswood* v. *State,* 3 *Heisk,* (Tenn.) 468; *St. Louis & E. Ry.* v. *Lux,* 63 Ill. 523. But there is respectable authority holding contrary to the principal case. "If error appears in the ruling of the trial court on a challenge for cause, that question should be decided wholly independent of any consideration whether the party litigant had or had not exhausted his peremptory challenges." *Theobald* v. *St. Louis Transit Co.,* 191 Mo. 395; *People* v. *Bodine,* 1 Den. (N. Y.) 281; *Freeman* v. *People,* 4 Den. (N. Y.) 9; *Sampson* v. *Schaffer,* 3 Cal. 107; *Brown* v. *State,* 57 Miss. 424. But to get a reversal for erroneous ruling there must be prejudice shown, even though the party has exhausted all his peremptory challenges. *Graff* v. *People,* 208 Ill. 312, 70 N. E. 299; *Moore* v. *Commonwealth,* 7 Bush (Ky.) 191; *Johns* v. *State,* 55 Md. 350; *State* v. *Raymond,* 11 Nev. 98; *Pool* v. *Milwaukee Mechanics Ins. Co.,* 94 Wis. 447, 69 N. W. 65. However there is authority for the rule that no prejudice need be shown to secure a reversal. *Terrell* v. *State,* 69 Ark. 449, 64 S. W. 223; *People* v. *Weil,* 40 Cal. 268; *Klyce* v. *State,* 79 Miss. 652, 31 So. 339; *Hartnett* v. *State,* 42 Oh. St. 568.

LIBEL—WHITE WOMAN CALLED "NEGRESS."—In an article relating the details of a burglary, defendant newspaper referred to plaintiff as a "negress." Plaintiff brings libel suit. *Held,* she could recover. *Express Pub. Co.* v. *Orsborn,* (Tex. 1912) 151 S. W. 574.

Publishing a white woman in a newspaper as "colored" has been held to be libellous *per se. Flood* v. *News and Courier Co.,* 71 S. C. 112, 50 S. E. 637; *Upton* v. *Publishing Co.,* 104 La. 141, 28 So. 970. On the other hand it has been held that calling a white man a negro is not slanderous *per se. McDowell* v. *Bowles,* 53 N. C. 184. But circulating a report that a white man is a negro has been held slanderous, *Spotorno* v. *Fourichon,* 40 La. Ann. 423, 4 So. 71.